**U.S. Department of Labor**

Office of Administrative Law Judges
2 Executive Campus, Suite 450
Cherry Hill, NJ 08002

(856) 486-3800
(856) 486-3806 (FAX)

**Issue Date: 09 May 2006**

CASE NO.: 2005-BLA-06099
2005-BLA-06100

In the Matter of

**RAMONA MCCRARY**, widow,
**JOHN MCCRARY**, deceased,
Claimants

v.

**U.S. STEEL MINING CO., LLC**,
Employer

and

**DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,**
Party-in-interest.

Appearances: Patrick K. Nakamura for the Claimant
James N. Nolan for the Employer

Before: **PAUL H. TEITLER**
Administrative Law Judge

## DECISION AND ORDER

This proceeding arises from a claim for benefits under 30 U.S.C. §§901-945 (the Act). In accordance with the Act and the regulations issued thereunder, this case was referred to the Office of Administrative Law Judges by the Director, Office of Workers' Compensation Programs for a formal hearing.

This claim was brought by the miner, who is now deceased. His claim and his wife's survivor claim are consolidated in this proceeding. Benefits under the Act are awardable to persons who are totally disabled within the meaning of the Act due to pneumoconiosis. Benefits are also awardable to the survivors of miners whose death was caused by pneumoconiosis. Pneumoconiosis is a dust disease of the lungs arising from coal mine employment, and it is commonly known as black lung.

John McCrary, miner, filed a claim on March 6, 2003. Mr. McCrary died on December 10, 2003. His wife Ramona McCrary, Claimant, filed a claim for survivor's benefits on January 7, 2004. A hearing was held before me in Birmingham, Alabama on February 14, 2006.

## SUMMARY OF CLAIMANT'S TESTIMONY

Claimant, Ramona McCrary, testified at the hearing on February 14, 2006. She and her husband were married fifty-four years. She testified that her husband worked solely as a coal miner from the time he was nineteen until he retired in 1991. (T 10-11). Mr. McCrary had troubled breathing at the time of retirement, which gradually worsened over twelve years until his death. (T 12). Activities such as mowing the lawn, hunting, fishing and walking were limited upon his retirement. (T 13). He would "give out" when he tried to walk and had difficulty breathing. Within a year and a half he could not do anything. He would have to drive to his sons' homes, which were on the same block as his home. (T 14).

## STIPULATIONS

The parties have stipulated to forty-four (44) years of coal mine employment.

## ISSUES

(1) Whether Miner had pneumoconiosis,

(2) Whether Miner's pneumoconiosis arose out of his coal mine employment,

(3) Whether Miner was totally disabled due to pneumoconiosis,

(4) Whether Miner's death was caused by pneumoconiosis.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Entitlement to benefits under 20 C.F.R. §718 depends upon the proof of three elements. The miner must establish pneumoconiosis, that it arose out of his coal mine employment, and that he is totally disabled due to pneumoconiosis. Entitlement under Part 718 for a survivor's claim depends upon whether a miner's death was due to pneumoconiosis. 20 C.F.R. § 718.205(a).

Section 7(c) of the Administrative Procedure Act imposes the burden of persuasion on the party seeking the rule, in this case, Claimant. Section 7(c) also requires a claimant to meet his burden by a preponderance of the evidence, not by clear and convincing evidence. Accordingly, if the evidence is evenly balanced, Claimant must lose. Director, OWCP v. Greenwich Collieries, 512 U.S.267 (1994).

**(1) Presence of pneumoconiosis**

Section 718.202(a) sets forth four alternate methods for determining the existence of pneumoconiosis. Pursuant to §718.202, the claimant can demonstrate pneumoconiosis by means of 1) x-rays interpreted as positive for the disease, or 2) biopsy or autopsy evidence, or 3) the presumptions described in §§718.304, 718.305, or 718.306, if found to be applicable, or 4) a reasoned medical opinion which concludes the presence of the disease, if the opinion is based on objective medical evidence such as pulmonary function studies, arterial blood gas tests, physical examinations, and medical and work histories.

Chest X-ray Evidence

Under §718.202(a)(1), a finding of the presence of pneumoconiosis may be based upon a chest x-ray conducted and classified in accordance with §718.102. To establish the existence of pneumoconiosis, a chest x-ray must be classified as category 1, 2, 3, A, B, or C, according to the ILO-U/C classification system. A chest x-ray classified as category 0, including subcategories 0/1, 0/0, or 0/-, does not constitute evidence of pneumoconiosis.

Chest x-ray interpretations, relevant to the determination of whether Claimant has pneumoconiosis, were submitted into evidence. The following is a list of admissible x-ray readings and the names and qualifications of the interpreting physicians.

| DATE OF X-RAY | DATE READ | EX. NO. | PHYSICIAN | RADIOLOGICAL CREDENTIALS | I.L.O. CLASS |
|---|---|---|---|---|---|
| 4/25/03 | 5/1/03 | DX 11 | Dr. Ballard | B, BCR | 1/0 |
| 4/25/03 | 7/14/03 | DX 11 | Dr. Barrett | B, BCR | Quality only- 2 |
| 9/22/03 | 9/22/03 | DX 12 | Dr. Goldstein | B | 2/1 |

Under Part 718, where the x-ray evidence is in conflict, consideration shall be given to the readers' radiological qualifications. Dixon v. North Camp Coal Co., 8 BLR 1-344 (1985). The administrative law judge may assign more weight to the x-ray interpretation of a B-reader. Aimone v. Morrison Knudson Co., 8 BLR 1-32 (19 85); Vance v. Eastern Associated Coal Corp., 8 BLR 1-69 (1985). The Benefits Review Board held the interpretation of an x-ray by a physician who is a board-certified radiologist as well as a B-reader may be given more weight than the interpretation of a physician who is only a B-reader. Scheckler v. Clinchfield Coal Co., 7 BLR 1-128 (1984).

Employer contends that the x-ray results are the consequence of chemotherapy and radiation treatments for lung cancer. Employer submitted a series of letters from Dr. Goldstein, the first of which strongly speculates that the miner had asbestosis, and the last of which stated that he had neither pneumoconiosis nor asbestosis. (DX 12, EX 7). Dr. Goldstein concludes that the interstitial changes after therapy were a result of that therapy, not exposure to coal dust. Dr.

Goldstein bases this change in opinion on hospital records which contain an x-ray taken prior to miner's chemotherapy and radiation treatment. However, no physician who reviewed the miner's chest X-rays during his hospital admissions classified his chest X-rays in accordance with the provisions of § 718.102(b), nor did they interpret any chest X-ray film as positive for the presence of pneumoconiosis as required by the regulations. Consequently, I find that the chest X-rays are not in compliance with the regulations and thus do not constitute evidence of the presence, or absence, of pneumoconiosis. Dr. Goldstein's medical opinion regarding the x-ray evidence as a whole will be discussed in the medical opinion section below.

Dr. Ballard, a board certified radiologist and B-reader, classified the April 25, 2003 x-ray as 1/0, and wrote "the parenchymal changes are consistent with Coalworkers pneumoconiosis provided the subject's exposure history and period of latency are appropriate." There are no conflicting x-rays in evidence. While Dr. Goldstein later retracted his assessment based on previous x-rays which are not in evidence, he did mark that the pleural abnormalities were consistent with pneumoconiosis. Therefore, based on these two x-rays alone, I find that Claimant has established the presence of pneumoconiosis.

Biopsy or Autopsy Evidence

Pursuant to §718.202(a)(2), a claimant may establish the existence of pneumoconiosis by biopsy or autopsy evidence. Miner had a biopsy performed on February 24, 2003. Dr. Paul Biggs wrote the report of the biopsy, finding: "Fragments of benign bronchial wall and pulmonary parenchyma. Foci of fibrosis are present, which are associated with anthracotic pigment and few small birefringent crystals (silica)." (EX 3). Dr. Crain concurred that this test showed pulmonary fibrosis. (CX 1).

Section 718, Part 202(a)(2) states that a finding of anthracotic pigmentation alone shall not establish the existence of pneumoconiosis. Even though here there is not just a finding of pigmentation that indicates an accumulation of smoke or dust in the lungs, but silica indicating a pulmonary disease as well, no doctor indicated that this finding was one of pneumoconiosis. Therefore it can not be said that this biopsy established the existence of pneumoconiosis.

Medical Opinion

Since the presumptions described in §§718.304, 718.305, and 718.306 are inapplicable, the only other method by which Claimant may establish the existence of pneumoconiosis is by reasoned medical opinion. The determination of pneumoconiosis may be made by a physician, notwithstanding a negative chest x-ray, if his opinion is reasoned and supported by objective medical evidence such as pulmonary function tests and blood gas studies. 20 C.F.R. §718.202(a)(4)(2000) and (2001). An opinion is well-documented and reasoned when it is based on evidence such as physical examinations, symptoms, and other adequate data that support the physician's conclusions. See Fields v. Island Creek Coal Co., 10 B.L.R. 1-19 (1987); Hess v. Clinchfield Coal Co., 7 B.L.R. 1-295 (1984).

Dr. Michael Crain first saw miner on February 6, 2003, prior to the diagnosis and treatment for lung cancer. (EX 3). Dr. Crain elicited histories, including that of tobacco abuse ending approximately 20 years ago, and a 44 year coal mining history. From a chest x-ray and an exam, Dr. Crain diagnosed pneumoconiosis secondary to coal and silica dust exposure. He found a significant disease with resting and exercise hypoxemia. Spirometry showed mild to moderate restriction with a severe impairment in diffusion. Dr. Crain noted "bilateral inspiratory crackles secondary to interstitial fibrosis." He sent Miner home that day with oxygen.

Once Mr. McCrary had been diagnosed and treated for lung cancer, Dr. Crain continued to diagnose pneumoconiosis as well, as evidenced on June 12, 2003. He continued to prescribe oxygen for the patient. In his medical opinion offered in relation to this case, Dr. Crain stated that Mr. McCrary "had both coal worker's pneumoconiosis associated with significant hypoxemia, as well as lung cancer." (CX 1).

The Director submitted the medical opinion of Dr. Jeffrey Hawkins. (DX 11). Dr. Hawkins is a board certified internist with a subspecialty in pulmonary medicine. Dr. Hawkins examined the miner on April 25, 2003. Dr. Hawkins elicited social and work histories, and performed diagnostic tests, including a chest x-ray, PFT and ABG. He elicited a 33 year smoking history. Dr. Hawkins diagnosed Mr. McCrary with 1)Pneumoconiosis, and 2)Lung cancer. His reasons for the diagnosis of pneumoconiosis included: an abnormal chest x-ray, the length of exposure, exertional dyspnea, an abnormal spirometry, and exertional hypoxemia.

Dr. Goldstein examined Mr. McCrary on September 22, 2003. (EX 7). Initially, as discussed above, Dr. Goldstein opined that the miner might have asbestosis rather than pneumoconiosis. Later he retracted this statement, stating that any pulmonary problems were related to the miner's lung cancer and the treatment thereof. This change was based upon a review of earlier records, which he felt did not support the diagnosis of occupational pneumoconiosis. In a letter dated October 30, 2003, Dr. Goldstein wrote "[T]he CT scan reports, in my estimation support the fact that there was no significant interstitial lung disease prior to the patient having chemotherapy and radiation therapy."

Dr. David Rosenberg, board certified in internal medicine, pulmonary disease, and occupational medicine, reviewed parts of Mr. McCrary's records on behalf of the Employer on April 5, 2005. (EX 1). Dr. Rosenberg relied mainly upon the examinations of Drs. Crain, Hawkins and Goldstein. Dr. Rosenberg concluded that while Mr. McCrary did have linear changes evident on chest x-rays, and abnormal blood gas studies after exercise, any fibrosis was more likely due to smoking and any diffusing insufficiencies with radiation and chemotherapy rather than pneumoconiosis from coal dust.

Employer mainly contends that Claimant's doctors do not take into account the miner's long smoking history, but this is untrue; both Drs. Crain and Hawkins account for the lengthy smoking history, as well as the lengthy coal mining history. Employer's doctors also argue that the results of the miner's diagnostic testing were tainted by his treatment for cancer. However, Dr. Crain tested Mr. McCrary prior to his cancer treatment, and maintained that he had pneumoconiosis even after the cancer was discovered. Likewise, Dr. Hawkins tested Mr. McCrary prior to his cancer treatment, and diagnosed pneumoconiosis and lung cancer. Mr.

McCrary's radiation and chemotherapy started in or around the first week of May 2003. The testing and evaluations conducted by Dr. Crain and Dr. Hawkins are very revealing because they evidence pneumoconiosis prior to the commencement of cancer treatment, and with the knowledge that Mr. McCrary had lung cancer.

Overall, the medical opinions are split on the issue of pneumoconiosis. All four of the doctors providing such opinions are well qualified physicians. Dr. Crain, Dr. Goldstein, and Dr. Rosenberg are all board certified in pulmonary diseases. Dr. Hawkins is board certified in internal medicine with a subspecialty in pulmonary medicine. However, I feel that Dr. Goldstein's assessment that there was no significant lung disease prior to treatment for his lung cancer is not well reasoned, based upon Dr. Crain's findings and Mrs. McCrary's testimony. Therefore, I find that the miner has established the existence of pneumoconiosis on the basis of medical opinion.

**(2) Arose out of coal mine employment**

In addition to establishing the existence of pneumoconiosis, a claimant must also establish his pneumoconiosis arose, at least in part, out of his coal mine employment. Pursuant to §718.203(b), a claimant is entitled to a rebuttable presumption of a causal relationship between his pneumoconiosis and his coal mine employment if he worked for at least ten (10) years as a coal miner. In the instant case, Claimant established forty-four (44) years CME years of coal mine employment.

Employer offered evidence to show that Mr. McCrary did not have pneumoconiosis, but rather had lung cancer secondary to smoking. However, as Claimant has shown that Mr. McCrary did have pneumoconiosis, as well as lung cancer, I find that the presumption concerning the pneumoconiosis has not been rebutted. Employer has stipulated to the fact that Mr. McCrary worked as a coal miner for 44 years, his entire working life. As the presumption of the causal relationship has not been rebutted, I find that the miner's pneumoconiosis arose out of his coal mine employment.

**(3) Total disability**

Claimant must establish that he is totally disabled due to a respiratory or pulmonary condition. Section 718.204(b)(1) provides as follows:

> [A] miner shall be considered totally disabled if the miner has a pulmonary or respiratory impairment which, standing alone, prevents or prevented the miner
>
> (i) From performing his or her usual coal mine work; and
> (ii) From engaging in gainful employment . . . in a mine or mines . . .

§ 718.204(b)(1).

Nonpulmonary and nonrespiratory conditions which cause an "independent disability unrelated to the miner's pulmonary or respiratory disability" have no bearing on total disability under the Act. § 718.204(a); see also, Beatty v. Danri Corp., 16 B.L.R. 1-1 (1991), aff'd as Beatty v. Danri Corp. & Triangle Enterprises, 49 F.3d 993 (3d Cir. 1995).

Claimant may establish total disability in one of four ways: pulmonary function study; arterial blood gas study; evidence of cor pulmonale with right-sided congestive heart failure; or reasoned medical opinion. § 718.204(b)(2)(i-iv). Producing evidence under one of these four ways will create a presumption of total disability only in the absence of contrary evidence of greater weight. Gee v. W.G. Moore & Sons, 9 B.L.R. 1-4 (1986). All medical evidence relevant to the question of total disability must be weighed, like and unlike together, with Claimant bearing the burden of establishing total disability by a preponderance of the evidence. Rafferty v. Jones & Laughlin Steel Corp., 9 B.L.R. 1-231 (1987).

Claimant must establish that his total disability is due to pneumoconiosis. This element of entitlement is established if pneumoconiosis, as defined in Section 718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Section 718.204(c)(1); Bonessa v. United States Steel Corp., 884 F.2d 726 (3d Cir. 1989).

Pulmonary Function Tests

In order to establish total disability through pulmonary function tests, the $FEV_1$ must be equal to or less than the values listed in Table B1 of Appendix B to this part and, in addition, the tests must also reveal either: (1) values equal to or less than those listed in Table B3 for the FVC test, or (2) values equal to or less than those listed in Table B5 for the MVV test or, (3) a percentage of 55 or less when the results of the $FEV_1$ test are divided by the results of the FVC tests. § 718.204(b)(2)(i)(A-C). Such studies are designated as "qualifying" under the regulations. Assessment of pulmonary function study results is dependent on Claimant's height, which on average was noted to be 67.5 inches. I therefore used that height in evaluating the studies. Protopappas v. Director, OWCP, 6 B.L.R. 1-221 (1983).

The current record contains the pulmonary function studies summarized below.

| DATE | EX. NO. | PHYSICIAN | AGE/ HEIGHT | $FEV_1$ | FVC | MVV | $FEV_1$/ FVC | QUALIFIES |
|---|---|---|---|---|---|---|---|---|
| 4/25/03 | DX 11 | Dr. Hawkins | 73/68.0 | 2.12 | 3.26 | 70 | 65% | NO |
| 9/22/03 | DX 12 | Dr. Goldstein | 74/67.0 | 1.96 | 2.47 | 61 | 79% | NO |

Since there is no PFT that indicates total disability under the regulations, I must find that Claimant has failed to establish total disability due to pneumoconiosis on the basis of pulmonary function tests.

Arterial Blood Gas Studies

The current record contains the arterial blood gas studies summarized below.

| DATE | EX. NO. | PHYSICIAN | PCO2 | PO2 | QUALIFIES |
|---|---|---|---|---|---|
| 4/25/03 | DX 11 | Dr. Hawkins | 40.0<br>38.0* | 73.0<br>48.0* | YES-<br>post exercise |
| 9/22/03 | DX 12 | Dr. Goldstein | 38.0 | 61.0 | YES |

*post-exercise

Since there are two qualifying test results, I find that the miner has established total disability under the provisions of § 718.204(b)(2)(ii).

Cor Pulmonale

Under § 718.204(b)(2)(iii), total disability can also be established where the miner had pneumoconiosis and the medical evidence shows that he suffers from cor pulmonale with right-sided congestive heart failure. There is no record evidence of cor pulmonale with right-sided congestive heart failure. Accordingly, total disability has not been established pursuant to 20 C.F.R. § 718.204(b)(2)(iii).

Medical Opinion

The remaining means of establishing total disability is with the reasoned medical judgment of a physician that Claimant's respiratory or pulmonary condition prevents him from engaging in his usual coal mine work or comparable and gainful work. Such an opinion must be based on medically acceptable clinical and laboratory diagnostic techniques. § 718.204(b)(2)(iv).

An opinion is well-documented and reasoned when it is based on evidence such as physical examinations, symptoms, and other adequate data that support the physician's conclusions. See Fields v. Island Creek Coal Co., 10 B.L.R. 1-19 (1987); Hess v. Clinchfield Coal Co., 7 B.L.R. 1-295 (1984). A medical opinion that is undocumented or unreasoned may be given little or no weight. Clark v. Karst-Robbins Coal Co., 12 B.L.R. 1-149 (1989); see also Duke v. Director, OWCP, 6 B.L.R. 1-673 (1983) (a report is properly discredited where the physician does not explain how the underlying documentation supports his or her diagnosis).

In February 2003, Dr. Crain diagnosed Mr. McCrary with a severe disability caused by pneumoconiosis. (CX 1). Subsequently Dr. Hawkins stated, upon examination in April 2003, that the miner had a moderate to severe pulmonary impairment which would prevent the miner from performing his last coal mining work. Dr. Hawkins stated that Mr. McCrary required supplemental oxygen, had exertional dyspnea, could not perform manual labor, and should avoid further exposure to chemicals, dusts and fumes. (DX 11). Dr. Hawkins stated that this disability was caused by pneumoconiosis. I note that these assessments were made prior to Mr. McCrary's treatment for cancer.

Both Drs. Goldstein and Rosenberg concur that Mr. McCrary was totally disabled from performing his last coal mine employment; however, they opine that this disability is the result of the miner's treatment for lung cancer, not pneumoconiosis. It is difficult to assess their medical opinions on total disability when they do not believe the miner even had pneumoconiosis, because I have found that he did have the disease. Drs. Goldstein and Rosenberg opined that the disability reflected in examinations and tests was the result of chemotherapy and radiation. However gas exchange and diffusion problems were noted by Dr. Crain prior to the commencement of such treatment. Mrs. McCrary has testified to the miner's difficulties in walking and breathing prior to these treatments. Since this is not reconciled in the doctors' reports, I can not rely on their assessment that the cancer treatment caused the miner's disability.

A miner does not have to prove that pneumoconiosis was the only cause of his disability. Here, Mr. McCrary suffered from both pneumoconiosis and lung cancer. Rather, he must show that the pneumoconiosis was a substantially contributing cause of his totally disabling respiratory or pulmonary impairment. Section 718.204(c)(1); Bonessa v. United States Steel Corp., 884 F.2d 726 (3d Cir. 1989). Mr. McCrary has shown that pneumoconiosis was a substantially contributing cause of his disability through the medical opinions of Dr. Crain and Dr. Hawkins.

**(4) Death due to pneumoconiosis**

Benefits are provided for the survivors of miners whose death was due to pneumoconiosis. Death due to pneumoconiosis may be established under § 718.205(c) by showing any one of the following criteria:

(1) Competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

(2) Evidence that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Under § 718.304, the miner suffered from a chronic dust disease of the lung and chest x-ray evidence shows one or more large opacities (greater than 1 centimeter), biopsy or autopsy shows massive lesions in the lung, or other evidence (in accord with acceptable medical procedures) show a condition which could reasonably be expected to yield such large opacities or massive lesions.

Section § 718.205(c)(5) provides that pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

Two doctors, Dr. Crain and Dr. Dossman, stated that the miner's pneumoconiosis complicated his treatment for lung cancer. Dr. Crain stated that Mr. McCrary was not a surgical candidate due to his pulmonary condition. Dr. Crain referred Mr. McCrary to chemotherapy and radiation treatment, stating that Mr. McCrary was "non-operable secondary to his underlying diseases, hypoxemia and probable mediastinal involvement." (EX 3). In a note dated March 14, 2003, Dr. Dossman, an oncologist at Baptist Radiation Oncology Department, discussed Dr.

Crain's assessment and agreed: "The patient has been evaluated by Dr. Crain who felt the patient is not a surgical candidate due to his pulmonary condition and evidence of mediastinal lymph node extension. I would agree with this assessment." (EX 3).

Even if Mr. McCrary died primarily due to his lung cancer, as Employer contends, the fact that he was inoperable due to his pneumoconiosis makes the disease a significantly contributing factor of his death. There is no evidence that operating would have prolonged Mr. McCrary's life, but not being able to operate can be said to have hastened his death. Claimant is not required to prove that had the miner had an operation he would have lived longer; instead, I find the fact that the miner's pneumoconiosis made this avenue an impossibility enough to satisfy the requirements of 20 C.F.R. §718.205.

## Entitlement

As John McCrary, miner, and Ramona McCrary, Claimant, have established total disability and death due to pneumoconiosis, they are entitled to benefits under the Act.

Benefits are to be paid in monthly increments, beginning with the first month in which a claimant satisfies all conditions of entitlement. 30 U.S.C. 932(d); 20 C.F.R. 725.203(a)(2000) and (2001). The miner, John McCrary, satisfied all conditions of entitlement as of April 25, 2003, the date that Dr. Hawkins determined him to be totally disabled from returning to coal mine employment.

A surviving spouse is entitled to benefits for each month beginning with the first month in which all of the conditions of entitlement prescribed in §725.212 are satisfied. The Claimant, Ramona McCrary, satisfied all conditions of entitlement as of December 10, 2003, the date of her husband's death, as the opinions of Drs. Crain and Dossman regarding the miner's inoperability were given prior to this date.

## ATTORNEY'S FEE

No award of an attorney's fee for services to Claimant is made herein because no application for fees has been made by Claimant's counsel. Thirty (30) days is hereby granted to counsel for the submission of an application for fees conforming to the requirements of 20 C.F.R. 4,6 §725.365 and §725.320 of the regulations. A service sheet showing service has been made to all the parties, including the Claimant, must accompany the application. Parties have ten (10) days following receipt of such application to file any objections. The Act prohibits the charging of a fee in the absence of an approved application.

## ORDER

Accordingly, the Employer shall:

(1) Pay all benefits to which the miner is entitled under the Act commencing as April 25, 2003.

(2) Pay all benefits to which the Claimant is entitled under the Act commencing as of December 10, 2003.

(3) Pay Claimant's attorney, Patrick K. Nakamura, Esquire, fees and expenses to be established in a supplemental decision and order.

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**PAUL H. TEITLER**
Administrative Law Judge

Cherry Hill, New Jersey

**NOTICE OF APPEAL RIGHTS:** If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Benefits Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days from the date on which the administrative law judge's decision is filed with the district director's office. *See* 20 C.F.R. §§ 725.458 and 725.459. The address of the Board is: Benefits Review Board, U.S. Department of Labor, P.O. Box 37601, Washington, DC 20013-7601. Your appeal is considered filed on the date it is received in the Office of the Clerk of the Board, unless the appeal is sent by mail and the Board determines that the U.S. Postal Service postmark, or other reliable evidence establishing the mailing date, may be used. *See* 20 C.F.R. § 802.207. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

After receipt of an appeal, the Board will issue a notice to all parties acknowledging receipt of the appeal and advising them as to any further action needed.

At the time you file an appeal with the Board, you must also send a copy of the appeal letter to Donald S. Shire, Associate Solicitor, Black Lung and Longshore Legal Services, U.S. Department of Labor, 200 Constitution Ave., NW, Room N-2117, Washington, DC 20210. *See* 20 C.F.R. § 725.481.

If an appeal is not timely filed with the Board, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 20 C.F.R. § 725.479(a).